

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt new Section 3099 of Subchapter 2 of the California Code of Regulations (CCR), Title 15, Division 3, governing distribution of interest earned on inmate trust accounts.

Developing Federal case law and new State law, Assembly Bill (AB) 439, have established the concept that when prison authorities hold inmate money in trust accounts, earned interest should be collected and distributed to trust accounts of eligible inmates less any administrative expenses incurred.

AB 439 (2008) specifies that Inmate Trust Account Funds are to be deposited into an interest bearing account within the California State Treasury and kept in trust with the Treasurer who selects how the funds are to be invested. The State Treasury Account bears interest quarterly with distribution to inmates being divided into monthly disbursements. To ensure the CDCR has interest funds available to disburse to qualifying inmate trust accounts beginning January 1, 2009, excess trust funds will be invested three months prior to the date of the first distribution and subject to all normal debts and obligations including victim restitution.

Interest will be rounded down to the full penny and based on the average daily balance for the month. Interest will be distributed based on the interest rate the State Treasurer's Office has used to pay the interest to CDCR. When the amount of interest each qualifying inmate trust account has earned is determined, the expenses incurred in the investment will be deducted and the balance, if any, will be credited to the inmate's trust account.

Collection and distribution of interest must occur within established Federal and State income tax laws and reporting practices. Inmates must provide a valid Social Security Number (SSN) or a valid Taxpayer Identification Number (TIN). Only inmates with a valid SSN or a validated TIN will be eligible to receive interest. Inmates who refuse to provide a valid TIN number or for whom the SSN provided cannot be validated by the Social Security Administration will not receive interest. Foreign nationals or others who do not have a valid TIN will not be eligible for interest. Inmates who have received \$10 or more during a tax year will be provided a Form 1099INT by the CDCR and a report of all interest paid will be provided to the Internal Revenue Service and Franchise Tax Board.

Prior to AB 439 (2008), existing law in Penal Code 5008 required the Secretary of the CDCR to deposit interest accruing on inmate trust account funds into the Inmate Welfare Fund (IWF). The IWF is used for the welfare, education, and benefit of all inmates. Indigent inmates are provided the opportunity to obtain loans from the IWF to purchase materials for their initial or continued participation in the handicraft program. The IWF also supports necessary expenses in connection with the operation of the hobby shops and purchasing items for sale to inmates at canteens maintained at the State institutions. Net proceeds from the hobby shops and canteens are deposited in the IWF.

Assembly Bill (AB) 439, the result of Legislation and Lawsuit, Case Number 96-1739 SI, Todd Lewis Ashker, et al., v. CDCR, et al., deletes the above provision and requires the CDCR to deposit any accruing interest on inmate funds into each qualifying individual inmate trust account. Due to this litigation and resulting law change, the reduction of funds in the IWF will impact the programs it supports, and also the inmates who participate and benefit from them.

New Section 3099 is adopted.

Section 3099 is adopted to clarify and define the intent of these regulations. Text provides that the

Secretary of the California Department of Corrections and Rehabilitation (CDCR) is required by Penal Code Section 5008, to deposit any funds of inmates in his or her possession in trust with the Treasurer pursuant to Section 16305.3 of the Government Code. The Secretary of the CDCR shall deposit those funds in interest bearing bank accounts or invest or reinvest the funds in any of the securities described in Article 1 of the Government Code and for the purposes of deposit or investment only, and may mingle the funds of any inmate with the funds of other inmates. Any interest or increment accruing on those funds, less expenses incurred in the investment shall be deposited in qualifying individual inmate or parole trust accounts.

Subsection 3099(a) is adopted to specify when to begin distributing the interest earned on qualifying inmate trust account deposits, on what to base the amount to be distributed, and defines qualifying inmate trust accounts. Beginning January 1, 2009, interest earned on inmate trust account deposits shall be distributed to qualifying inmates trust accounts based upon the accounts average daily balance.

Subsection 3099(b) is adopted to specify the increments in which earned interest will be distributed. Interest earned will be distributed in whole penny increments; however, amounts less than a whole penny will not be rounded up to the next penny.

Subsection 3099(c) is adopted to specify where the inmate trust account funds shall be deposited. Inmate trust funds will be invested with the State Treasurer's Office in the Surplus Money Investment Fund and the Treasurer selects how the funds are to be invested. The use of the State Treasurer's Office reduces the costs of managing the investments to inmates.

Subsection 3099(d) is adopted to require distribution of interest earned to inmates be divided into monthly disbursements after deduction of operational costs. The State Treasurer's Office posts/pays interest quarterly; therefore, to have trust funds interest available to disburse to qualifying individual inmate trust accounts, the Secretary will deposit inmate trust account funds three months prior to the date of distribution.

Subsection 3099(e) is adopted to determine who is eligible to receive interest on trust accounts. Inmates must provide a valid Social Security Number or validated Individual Taxpayer Identification Number to be eligible to receive interest. A Social Security Number is a nine-digit number assigned by the Social Security Administration to an individual for tax and wage reporting purposes. A Tax Identification Number is a nine-digit number assigned to an individual who cannot obtain a Social Security Number, but who is required to have a Tax Identification Number.

Subsection 3099(f) is adopted to state the amount of interest inmates have earned during a tax year that requires the CDCR to file a Form 1099INT. Inmates who receive \$10 or more interest during a tax year shall be provided a Form 1099INT by the CDCR, which shows the taxable interest you must report. A report of all interest paid to qualifying inmate trust accounts will be provided to the Internal Revenue Service and Franchise Tax Board by the CDCR.

Subsection 3099(g) is adopted to define when interest will be distributed to inmate trust accounts. Interest will be distributed monthly after all normal debts and obligations including victim restitution the inmates owe have been deducted.

Subsection 3099(h) is adopted to specify the costs incurred by the Department for providing earned interest to the inmate trust accounts. These costs include reproduction of the Social Security

Administration consent form to validate Social Security Numbers, the 1099INT, costs of mailing, and any costs directly associated with the interest.

Subsection 3099(i) is adopted to designate where excess interest funds that are not distributed shall be placed. Although all individual inmate trust account funds are mingled together for investment, not all inmate trust accounts qualify to receive interest. Therefore, any excess earned interest (including interest earned on inmate trust accounts that do not qualify for interest) less the cost of providing the interest and the interest distributed to qualifying inmate trust accounts that remain at the end of a year shall be put into the Inmate Welfare Fund (IWF). The IWF is used for the welfare, education, and benefit of all inmates.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Department's initial determination.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that this action imposes no mandates on local agencies or school district, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department, in proposing amendments to these regulations, has not identified nor has it relied on any technical, theoretical, or empirical study, report, or similar document.